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Audit Division

PORT COMMISSION:

The Port Needs to Improve Its
Administration of Leases With
C.M.P. Service Partnership



Audit Number 02051
January 6, 2004






CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF THE CONTROLLER

Ed Harrington
Controller
Monique Zmuda
Deputy Controller

MEMORANDUM

TO: Port Commission

FROM: Edward Harrington 

DATE: January 6, 2004

SUBJECT: Audit of C.M.P. Service Partnership

SUMMARY

The Audits Division recently completed its concession audit of C.M.P. Service Partnership (C.M.P.). This audit covered leases to operate two parking lots on The Embarcadero in San Francisco for general public parking. One lease was for Seawall Lot 314 at Bay Street and The Embarcadero (Bay Street Lot), and the other lease was for Seawall Lot 351 at Washington Street and The Embarcadero (Washington Street Lot). C.M.P. continues to operate the Bay Street Lot, but the Port terminated the lease for the Washington Street Lot effective March 31, 2003. Our concession audit report, dated December 2, 2003, addressed whether C.M.P. complied with the reporting and rental payment provisions of its leases with the Port for the period from January 1, 2000, through December 31, 2002, along with directly related issues. This memorandum addresses certain matters not directly related to C.M.P.'s compliance with lease provisions.

The audit found that the Port Commission approved the month-to-month lease of the Bay Street lot in 1998 without a competitive bidding process, by approving a resolution that stated that C.M.P. had unique experience and that the tenancy was short term. Since five years have passed, it is clear that the tenancy has not been of a short term nature. It would be prudent for Port management to request Port Commission approval for continuing C.M.P.'s month-to-month tenancy of the Bay Street Lot, or for subjecting the leasing of the Bay Street Lot to a competitive bidding process.

The audit also found that the Port subsidized employee parking costs by taking 65 of 90 revenue generating parking spaces from the Washington Street Lot and renting most of them to Port employees at less than market rate. In doing so, the Port did not report the value of the benefit to the Internal Revenue Service (IRS). According to the Port parking administrator, employee parking has been available at the same discounted rate (\$46.88) since 1994, and remains available today at this rate, at another Port parking lot.

DETAILS OF FINDINGS

The Port Should Reassess The Month-to-Month Tenancy Of the Bay Street Lot

The Port did not conduct a competitive bidding process when it executed the lease for the Bay Street lot in 1998. C.M.P. had operated various activities on the lot, including parking, under a management agreement with the prior tenant. In 1998, Port management recommended Port Commission approval of the lease with C.M.P pursuant to C.M.P.'s request to continue operating parking on the lot under a month-to-month lease while the prior tenant completed the removal of underground storage tanks, and pending development of the lot pursuant to the *Waterfront Land Use Plan*. Port management also stated in its recommendation that it would be impractical to bid the opportunity because C.M.P. had unique experience and because of the month-to-month tenancy. The Port Commission subsequently approved the month-to-month lease, with the adopted resolution noting that C.M.P had unique experience and that the tenancy was short term.

The senior Port property manager responsible for the lease has stated that the removal of the underground storage tanks was subsequently completed, and that no development of the Bay Street lot has occurred or is currently planned. Since five years have passed, it is clear that the tenancy has not been of a short term nature.

It would be prudent for Port management to request Port Commission approval for continuing C.M.P.'s month-to-month tenancy, or for subjecting the leasing of the Bay Street Lot to a competitive bidding process. In fact, San Francisco Administrative Code Sec. 23.24, in effect in 1998, recommended that all leases of this type be awarded in accordance with competitive bidding procedures, unless the procedures are impractical or impossible. San Francisco Administrative Code Sec. 23.33, now in effect, has a similar provision. Although competitive bidding was deemed impractical in 1998, it is apparent that the lease has not been short term, and that the practicality of a competitive bidding process for this lot has not been tested.

The Port Subsidizes Employee Parking Costs, But Does Not Report the Value of Employee Parking Benefits to The Internal Revenue Service

The Port subsidized employee parking costs by taking 65 of 90 revenue generating parking spaces from the Washington Street Lot and renting most of them to Port employees at less than market rate. However, in doing so the Port did not report the value of the benefit to the Internal Revenue Service (IRS).

According to the Port's parking administrator, during 2001 and 2002 the Port made employee parking available at this lot to any Port employee at the rate of \$46.88 per month, and any of the 65 spaces not used by employees were used to park Port vehicles for which

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there were no parking fees. For the two years of the audit period during which the Port provided employee parking spaces at the Washington Street Lot, approximately 54 of the 65 spaces were used by Port employees each month. According to the Port parking administrator, employee parking has been available at the same rate (\$46.88) since 1994, and remains available today at this rate, at another Port parking lot.

The Port's human resource manager informed us that the Port did not report the value of the employee parking benefit on Port employee tax returns to the IRS. For 2002, for example, the IRS required that the fair market value of parking benefits exceeding \$185 per month, less any amounts paid by an employee, be included as taxable income on the employee's W-2 form. C.M.P. charged approximately \$300 to \$400 for monthly parking on this lot during the audit period. Based on these rates, the Port should have reported at least \$68 in the monthly taxable wages for employees who paid for this parking in 2002.

RECOMMENDATIONS

Port management should take the following actions:

- Request Port Commission approval for continuing C.M.P.'s month-to-month tenancy of the Bay Street Lot, or for issuing a RFP to subject the leasing of the Bay Street Lot to a competitive bidding process.
- Evaluate the employee rate charged, taxability, and continuance of employee parking, and report the value of employee parking benefits to the IRS, as necessary.

The Port's response is attached to this report.

We conducted this review according to the standards established by the Institute of Internal Auditors.

Staff: Robert Tarsia, Audit Manager
Kathy Buckley

PORT OF SAN FRANCISCO RESPONSE TO THE AUDIT

C.M.P. Audit

Administrative Recommendations – Response

Reassess month-to month tenancy of the Bay Street Lot

We concur with the recommendation to reassess the month-to-month tenancy of the Bay Street Lot that has been operated by C.M.P since 1998. The underground storage tanks on the premises have been removed. While the lot remains part of a "Mixed Use Opportunity Area", as defined in the 1997 Waterfront Land Use Plan, Port development activities are currently focused on other areas.

Employee Parking and Taxable Value of Parking Benefits

The Controller's Office has raised good questions concerning employee parking arrangements that warrant further evaluation and action. We would like to evaluate more thoroughly the valuation issues surrounding the Port's employee parking benefit. Our evaluation and re-assessment will consider the employee rate charged and the taxability of any parking benefit above the safe harbor amounts set forth in IRS regulations. We will also coordinate with the Controller's Office any necessary reporting to the IRS of taxable parking benefits.

John Woo

Fiscal Officer – Port of San Francisco

Memorandum

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